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 USA Capital Diversified Trust Deed Fund, LLC*

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re:  
 USA COMMERCIAL MORTGAGE COMPANY,  
 Debtor.

Case No. BK-S-06-10725 LBR  
 Case No. BK-S-06-10726 LBR  
 Case No. BK-S-06-10727 LBR  
 Case No. BK-S-06-10728 LBR  
 Case No. BK-S-06-10729 LBR

In re:  
 USA CAPITAL REALTY ADVISORS, LLC,  
 Debtor.

Chapter 11

In re:  
 USA CAPITAL DIVERSIFIED TRUST DEED  
 FUND, LLC,  
 Debtor.

Jointly Administered Under  
 Case No. BK-S-06-10725-LBR

In re:  
 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 Debtor.

**FIRST INTERIM FEE  
 APPLICATION OF BECKLEY  
 SINGLETON, CHTD. FOR THE  
 PERIOD FROM JUNE 9, 2006  
 THROUGH JULY 31, 2006**

In re:  
 USA SECURITIES, LLC,  
 Debtor.

**Hearing Date: September 28, 2006  
 Hearing Time: 9:30 a.m.**

Affects:  
☐ All Debtors  
☐ USA Commercial Mortgage Company  
☐ USA Securities, LLC  
☐ USA Capital Realty Advisors, LLC  
☒ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA First Trust Deed Fund, LLC

1 **TO THE HONORABLE LINDA B. RIEGLE, UNITED STATES BANKRUPTCY JUDGE:**

2 Beckley Singleton, Chtd. ("Beckley"), Nevada counsel for the Official Committee of Equity  
 3 Holders of USA Capital Diversified Trust Deed Fund, LLC (the "Committee"), as appointed by the  
 4 Office of the United States Trustee (the "UST"), submits its first interim fee application (the "First  
 5 Application"). By this First Application, Beckley seeks allowance and payment of interim  
 6 compensation for fees in the amount of \$74,332.00 for professional services rendered plus  
 7 reimbursement of expenses in the amount of \$7,917.04, for the period from June 9, 2006 through  
 8 July 31, 2006 (the "First Application Period"), for a total award of **\$82,249.04** (the "Requested  
 9 Compensation").<sup>1</sup> The total fees requested represent 298.0 hours expended during the First  
 10 Application Period.

11 This First Application is made and based upon the Declaration of Robert Worthen (the  
 12 "Worthen Declaration") and the Declaration of Anne M. Loraditch (the "Loraditch Declaration"),  
 13 both filed in support hereof and concurrently herewith and incorporate for all purposes herein by this  
 14 reference, and upon the following representations:

15 **I.**

16 **INTRODUCTION**

17 1. On June 9, 2006, the Committee hired Beckley as its Nevada counsel to represent its  
 18 interests in the above-captioned bankruptcy cases (the "Cases"). Loraditch Declaration, ¶ 4.

19 2. By its order entered June 22, 2006, the Court approved Beckley's employment as  
 20 Nevada counsel to work in conjunction with Orrick Herrington Sutcliffe LLP ("Orrick"), also  
 21 employed on that date, to represent the Committee and, in turn, the collective interests of all of the  
 22 equity holders of USA Capital Diversified Trust Deed Fund, LLC ("Debtor"). Loraditch  
 23 Declaration, ¶ 5.

24 3. On August 29, 2006, the Court entered its Administrative Order Establishing  
 25 Procedures for Interim Compensation and Reimbursement of Expenses of Professionals (the  
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27 <sup>1</sup> The Diversified Trust Deed Fund Committee and Beckley have reserved the right to seek compensation in the  
 28 other debtors' bankruptcy cases captioned above, pursuant to Sections 503(b)(3) and (4) of the Bankruptcy Code, at such  
 time in the future that they deem appropriate.

1 “Compensation Order”), which set forth procedures for professionals in these Cases to be paid.  
 2 Loraditch Declaration, ¶ 6; see Docket No. 1199.

3 4. Beckley has timely circulated its monthly fee statements (“Monthly Statements”) to  
 4 the Reviewing Parties<sup>2</sup> for the First Application Period and now seeks the interim allowance and  
 5 payment of the Requested Compensation for professional services rendered and for reimbursement  
 6 of actual and necessary costs incurred on behalf of the Committee, pursuant to the Compensation  
 7 Order and Section 331 of the Bankruptcy Code. Loraditch Declaration, ¶ 7; see Compensation  
 8 Order, 11 U.S.C. § 331.

9 5. Pursuant to the Compensation Order, Debtor is authorized to make the payment  
 10 requested in Beckley’s Monthly Statements, which consists of eighty percent (80%) of the fees for  
 11 services rendered and one hundred percent (100%) of the expenses incurred, during the First  
 12 Application Period, without a hearing or further order of the Court, unless an objection by one of the  
 13 Reviewing Parties is served on Beckley on or before September 15, 2006. If such an objection is  
 14 timely served, Debtor is authorized to pay the requested interim compensation, as stated in the  
 15 preceding sentence, but only in such amounts not subject to objection. Loraditch Declaration, ¶ 8;  
 16 see Compensation Order.

17 6. Also, pursuant to the Compensation Order, this First Application seeks allowance and  
 18 payment of the Requested Compensation, which includes the 20% of total fees charged that the  
 19 Debtor will holdback upon payment to Beckley of the amounts requested in its Monthly Statements  
 20 that are no subject to objection. As of the date of this First Application, Beckley has not been paid  
 21 any amounts. Loraditch Declaration, ¶ 9; see Compensation Order.

22 7. Beckley acknowledges that the interim payment of compensation and reimbursement  
 23 of expenses sought in this First Application does not constitute a request for final allowance of such  
 24 compensation and reimbursement of expenses. At the conclusion of Debtor’s chapter 11 case,  
 25 Beckley will seek final allowance of the compensation charged and expenses incurred for the entire  
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27  
 28 <sup>2</sup> Unless otherwise defined herein, capitalized terms shall the same meaning ascribed in the precedent papers  
 and pleadings already on file with the Court.

case, and any interim fees or expenses received during the course of the case will be credited against such finally allowed fees and expenses. Loraditch Declaration, ¶ 10.

## II.

### CASE STATUS

Working with counsel and existing management for the Debtor and the other debtors in these Cases, and counsel for the other committees appointed by the UST (the "Investor Committees"), the Committee continues to take measured, persistent steps towards gathering all of the information it can to be able to make informed decisions about what is in the best interests of its constituency. The process is very slow, sometimes, painfully so. Nevertheless, the Committee and its professionals have been and remain heavily involved in the Cases with the goals of protecting the Debtor's equity interests and obtaining as favorable a recovery for the Debtor and its members as possible.

## III.

### TASKS PERFORMED BY BECKLEY DURING THE FIRST APPLICATION PERIOD

Beckley, as the Committee's Nevada counsel, has represented the Committee in all aspects of these Chapter 11 cases during the First Application Period and continues to advise the Committee and Orrick and to work with the Debtor's Chief Restructuring Officer, counsel for the Debtor, counsel for the Investor Committees, numerous parties in interest, and other Court appointed professionals with respect to issues related to the Debtor's reorganization efforts. As Nevada counsel to the Committee, Beckley performs certain basic functions in this case; including, but not limited to:

- Advising the Committee with respect to its powers and duties as representing the collective interests of its constituency, Debtor's equity holders, in the continued management and operation of Debtor's business;
- Attending meetings and negotiating with representatives of the Debtor, constituency members, and other parties in interest and advising and consulting on the conduct of the case, including all of the legal and administrative requirements of a debtor operating in Chapter 11;

- Taking all necessary action to protect and preserve the Committee's interests, including the prosecution of actions on its behalf, the defense of any actions commenced against the Debtor's Estate, negotiations concerning all litigation in which the Debtor may be involved and objections to claims filed against the Estate;
- Preparing on behalf of the Committee motions, applications, answers, orders, reports and papers, as necessary to the administration of the Estate;
- Advising the Committee in connection with any sale, use or lease of assets;
- Advising the Committee and Orrick in connection with the local customs and practices of bankruptcy bar in this jurisdiction;
- Appearing before this Court, any appellate courts, and the United States Trustee, and protecting the interests of the Committee before such courts and the United States Trustee; and,
- Performing all other necessary legal services and providing all other necessary legal advice and counsel to the Committee in connection with these Chapter 11 cases.

#### IV.

#### SUMMARY OF FEES AND EXPENSES

This First Application covers Beckley's fees and expenses incurred by the Committee during the First Application Period totaling \$74,332.00 and \$7,917.04, respectively. The fees and expenses incurred during the First Application Period are detailed in the time records attached to the Loraditch Declaration as **Exhibit 1**, which are incorporated herein by this reference.

Beckley has submitted its monthly fee detail to the UST, counsel for the Debtor and the other debtors in these Cases, and counsel for the Investor Committees, in accordance with the provisions of the Compensation Order, which can be summarized as follows:

FIRST APPLICATION PERIOD	FEES	COSTS	TOTAL COMPENSATION REQUESTED
06/09/06 – 7/31/06	\$74,332.00	\$7,917.04	\$82,249.04

A summary of the fees incurred by Beckley in the First Application Period, rendered by personnel who worked on the case, is set forth below:

SERVICES BY PERSONNEL	HOURLY RATE	HOURS EXPENDED	TOTAL FEES
SHAREHOLDERS			
Brett A. Axelrod, Esq.	\$365.00	50.2	\$18,323.00
Bob L. Olson, Esq.	\$350.00	32.5	\$11,200.00
Michael Feder, Esq.	\$300.00	0.6	\$180.00
ASSOCIATES			
Anne M. Loraditch, Esq.	\$250.00	150.4	\$37,425.00
Micaela Rustia, Esq.	\$200.00	0.6	\$120.00
Dustin Moyes, Esq.	\$175.00	1.2	\$210.00
LAW CLERKS/ PARAPROFESSIONALS			
Patricia M. Kois, Certified Paralegal	\$140.00	59.3	\$6,874.00
Victoria L. Hightower	\$110.00	3.2	\$0.00
<b>TOTALS</b>		<b>298.0</b>	<b>\$74,332.00</b>

Beckley's blended hourly rate, not including paraprofessionals, during this First Application Period was \$287.05. Beckley's blended hourly rate, including paraprofessionals, during this First Application Period was \$249.44.

A summary of the services provided by Beckley in the First Fee Application Period, rendered by category, is set forth below:

TASK CODE	DESCRIPTION	HOURS	TOTAL FEES
1002	Creditor/Equity Communications	5.2	\$1,423.00
1003	Financing/Use of Cash Collateral	31.0	\$9,696.50
1004	Employment & Compensation (Beckley)	32.0	\$8,378.00
1005	Employment & Compensation (Other Professionals)	36.9	\$7,877.00
1006	Financial Filings	9.0	\$2,744.50
1010	Asset Disposition & Sales	36.6	\$11,369.50
1011	Case Administration	60.7	\$9,816.00
1013	Stay Litigation	2.2	\$550.00
1014	Bankruptcy Litigation	48.5	\$12,734.00
1015	Claims Administration	0.2	\$50.00
1016	Committee Communications	23.6	\$6,535.00

1017	Asset Analysis and Recovery	1.5	\$398.00
1018	Disclosure Statement and Plan	2.4	\$710.50
1020	Prospect High Income Fund	8.2	\$2,050.00
<b>TOTALS:</b>		<b>298.0</b>	<b>\$74,332.00</b>

1. CREDITOR/EQUITY COMMUNICATIONS, MATTER 1002 (5.2 Hours -- \$1,423.00). This category included services rendered in connection with responding to general telephone inquiries and correspondence from Debtor's investors, or equity holders, regarding the bankruptcy Cases, the status of the Debtor's loan portfolio, the anticipated recovery on their investments and the timing for distributions in the case, if any.

2. FINANCING/USE OF CASH COLLATERAL, MATTER 1003 (31.0 Hours -- \$9,696.50). This category included services rendered in connection with analyzing and advising the Committee on the term sheet circulated by Debtor proposing debtor in possession financing as well as the motions for debtor in possession financing and cash management filed by the Debtor and the other debtors in these Cases. Beckley's services in this category also included responding to and preparing for the argument at the hearings on such motions to ensure the interests of the Committee and its constituency were not negatively impacted. Orrick requested Beckley take the lead on the debtor in possession matter due to Orrick's prior representation of the prospective debtor in possession lender on other matters unrelated to these Cases, as previously disclosed to the Court by Orrick in declarations filed by Beckley on behalf on Marc Levinson.

3. EMPLOYMENT AND COMPENSATION (BECKLEY SINGLETON), MATTER 1004 (32.0 Hours -- \$8,378.00).

This category includes services rendered in connection with performing and carefully analyzing searches for conflicts of interest prohibiting Beckley's employment in these Cases, preparing Beckley's employment application as the Committee's Nevada counsel, and related pleadings, requesting such employment on a *nunc pro tunc* basis as of June 9, 2006, which was granted by the Court. Beckley also prepared, filed and served the necessary pleadings to secure a hearing on such application on shortened time and prepared, lodged and served (once entered by the Court), the order approving the Committee's application to employ Beckley.



Also included in this category are services rendered in connection with preparing required, ongoing disclosures, such as Beckley's monthly fee statements, and circulating those statements to the Reviewing Parties and Beckley's preliminary preparation of its first interim fee application. The hours Beckley expended in this category during the First Application Period laid the foundation for the preparation of subsequent monthly fee statements and interim fee applications going forward in this case.

4. EMPLOYMENT AND COMPENSATION (OTHER PROFESSIONALS), MATTER 1005 (36.9 Hours -- \$7,877.00).

This category includes a wide range of services rendered in connection with preparing and analyzing employment applications as well as interacting with professionals in this case and reviewing and analyzing pleadings related to professional compensation applications.

Specifically, Beckley revised, expanded, filed and served the Committee's applications to employ, on a *nunc pro tunc* basis as of June 1, 2006, (i) Orrick, as the Committee's chief counsel, which the Court granted; and (ii) FTI Consultants ("FTI"), as the Committee's financial advisors; which the Court also granted; and prepared, filed and served the necessary pleadings to secure a hearing on such applications on shortened time. Beckley prepared, lodged and served (once entered by the Court), the orders approving the Committee's applications to employ Orrick and FTI.

In addition, time spent in this category included services rendered in reviewing, analyzing and advising the Committee and Orrick, and coordinating the response to the applications filed by the Debtor and the other debtors in these Cases (i) for an administrative order setting procedures for allowing monthly interim compensation to professionals, and (ii) to employ David Huston as Special Conflicts Counsel. Also included are services rendered in reviewing, analyzing and advising the Committee and Orrick, and responding to the applications by other Investor Committees to employ their own counsel and financial advisors.

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1           5.     FINANCIAL FILINGS, MATTER 1006 (9.0 Hours -- \$2,744.50).

2           This category is comprised of services rendered in connection with Beckley's analysis, and  
3 advice and counsel to the Committee and its professionals with respect to the bankruptcy schedules  
4 and statements and monthly operating reports filed by the Debtor and other debtors in these Cases.<sup>3</sup>

5           6.     ASSET DISPOSITION & SALES, MATTER 1010 (36.6 Hours -- \$11,369.50).

6           This category includes services rendered in connection with reviewing and analyzing the  
7 Debtor's assets, reports detailing Debtor's loan portfolio as compiled and disseminated by the  
8 Debtor, and constructed by the FTI. Also included in this category are services rendered in  
9 connection with Beckley's analysis, advice and counsel to the Committee and its professionals  
10 regarding potential causes of action that the Estate may have against other parties. Beckley  
11 frequently conferred with the Committee's members, Orrick, the Committee's financial advisors,  
12 counsel for the Debtor, counsel for the Investor Committees and other parties in interest regarding  
13 the Debtor's potential recovery on its assets.

14          7.     CASE ADMINISTRATION, MATTER 1011 (60.7 HOURS -- \$9,816.00).

15          This category includes services rendered in connection with monitoring the status of the  
16 numerous administrative issues encountered in these Cases, communications between Beckley and  
17 Committee professionals, counsel representing other parties in interest regarding the status of the  
18 bankruptcy Cases, the maintenance of service lists and other administrative information and files,  
19 ensuring Debtor's compliance with the various reporting requirements imposed by the Court and the  
20 UST, as well as numerous tasks which do not clearly fit into one of the other activity categories.  
21 Beckley's services in this category ensure that the Committee's interests are served and that Debtor  
22 stays on course in its reorganization efforts.

23          8.     STAY LITIGATION, MATTER 1013 (2.2 HOURS -- \$550.00).

24          This category includes services rendered in connection with Beckley's analysis, and advice  
25 and counsel to the Committee and Orrick regarding the various motions seeking relief from the  
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27           <sup>3</sup> It should be noted that some entries in this category, totaling 4.3 hours and \$1,569.50 in fees, reflect services  
28 rendered in connection with Debtors' proposed debtor in possession financing and agreement with Investment Partners  
regarding the collateralization of the \$55 million note on the books of USA Commercial Mortgage. These entries should  
have been included in the Financing/Use of Cash task category under matter no. 1003.

1 automatic stay in these Cases including the drafting, filing and service of responsive pleadings, as  
2 necessary, and the preparation and attendance at hearings on such motions.

3 9. BANKRUPTCY LITIGATION, MATTER 1014 (48.5 HOURS -- \$12,734.00).

4 Generally, this category includes services rendered in connection with Beckley's analysis,  
5 advice and counsel to the Committee and Orrick, and consultations with opposing counsel with  
6 respect to the various pleadings filed by the Debtor and other debtors in these Cases. These  
7 activities include the review, drafting, filing and service of responsive pleadings, preparation for and  
8 attendance at the hearings on same, and the review and revision of various orders prepared and  
9 circulated in these Cases. Beckley's efforts in this matter ensured the protection of the Committee's  
10 interests and the compliance with local customs and practice of the bankruptcy bar in this  
11 jurisdiction.

12 10. CLAIMS ADMINISTRATION, MATTER 1015 (0.2 HOURS -- \$50.00).

13 This category is comprised primarily of services rendered in connection with analyzing the  
14 general claims of various parties filed in the case but does not include those services Beckley  
15 rendered in connection with the proof of claim filed by Prospect High Income Fund (described  
16 below).

17 11. COMMITTEE COMMUNICATIONS, MATTER 1016 (23.6 HOURS -- \$6,535.00).

18 This category includes services rendered in connection with various telephone conferences,  
19 meetings, and correspondence with the Committee, its professionals, and other parties in interest  
20 with respect to the Committee's interests and strategy in these Cases. This category also includes  
21 services rendered in connection with communications and correspondence between and among  
22 professionals and other parties in interest of the Investor Committees.

23 12. ASSET ANALYSIS AND RECOVERY, MATTER 1017 (1.5 HOURS -- \$398.00).

24 This category includes services rendered in connection with the review and analysis of  
25 reports disseminated by the Debtor and the FTI with respect to the Debtor's loan portfolio, including  
26 collateralization and collection efforts.

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13. DISCLOSURE STATEMENT AND PLAN, MATTER 1018 (2.4 HOURS -- \$710.50).

This category is comprised of services rendered in connection with Beckley's analysis, advice and counsel to the Committee and its professionals, and consultations with representatives of prospective plan proponents as to their proposed terms for Debtor's reorganization and/or liquidation.

14. PROSPECT HIGH INCOME FUND CLAIM, MATTER 1020 (8.2 HOURS -- \$2,050.00).

This category primarily relates to services rendered in connection with Beckley's analysis, advice and counsel to the Committee and Orrick, and consultations with opposing counsel with respect to the proof of claim filed against the Debtor's estate in the amount of \$20,000,000.00.

#### V.

#### PERSONNEL PRIMARILY ASSIGNED TO THIS MATTER

The personnel primarily assigned to this matter, and their hourly rates, are set forth below:

<b>Attorneys</b>	<b>JD</b>	<b>Billing Rate</b>
Brett A. Axelrod, Shareholder	1993	\$365.00
Bob L. Olson, Shareholder	1989	\$350.00
Anne M. Loraditch, Associate	2002	\$250.00
<b>Law Clerks and Paraprofessionals</b>		
Patricia M. Kois, Certified Paralegal		\$140.00

#### VI.

#### COMPLIANCE WITH GUIDELINES AND ORDER ESTABLISHING INTERIM COMPENSATION PROCEDURES

Beckley believes that every professional employed on behalf of a debtor in a chapter 11 case has a responsibility to control fees and expenses by providing services in an efficient and effective manner. To this end, Beckley diligently works to coordinate and facilitate the efficient prosecution of the matters for which it is employed. Staffing of matters within the case is done with the objective of providing the level of representation appropriate to the significance, complexity, or difficulty of the particular matter. Due to the sensitive nature of bankruptcy matters, it is not always possible to delegate authority to persons with lower billing rates. However, given the nature of these

1 Cases and the Court's repeated concerns on the issue, Beckley has taken great care to coordinate  
 2 with Orrick to ensure there has been no duplication of effort on any task. On certain occasions,  
 3 when more than one attorney attended a meeting or hearing, the attendance was necessary to  
 4 adequately represent the interests of the Committee and provide the context from which appropriate  
 5 advice and counsel could be given.

6 Beckley reviews all client billings for reasonableness and makes adjustments so that the  
 7 charges are consistent with the value of the services provided. Beckley charges hourly rates that are  
 8 similar to, if not lower than, those rates charged by comparable law firms for similar legal services.  
 9 See, e.g., In re Ginji Corp., 117 B.R. 983, 990 (Bankr. D. Nev. 1990). Beckley's blended hourly  
 10 rate, not including paraprofessionals, during this First Application Period was \$287.05. Beckley's  
 11 blended hourly rate, including paraprofessionals, during this First Application Period was \$249.44.

12 Beckley and the Committee believe that the fees and expenses sought in this First  
 13 Application are appropriate, and that the fees are reasonable and necessary in light of the  
 14 circumstances of this Chapter 11 case and the scope and difficulty of the business and legal issues  
 15 involved. See Worthen Declaration.

## 16 VII.

## 17 CONCLUSION

18 WHEREFORE, for all the foregoing reasons, Beckley Singleton respectfully requests that the  
 19 Court enter an order allowing and authorizing payment of interim compensation to Beckley for fees

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1 in the amount of \$74,332.00 for professional services rendered plus reimbursement of expenses in  
2 the amount of \$7,917.04, for the period from June 9, 2006 through July 31, 2006 for a total award of  
3 \$82,249.04.

4 Dated this 31st day of August 2006.

5 BECKLEY SINGLETON, CHTD.

6 By: 

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